

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDUARDO MARRERO,

Defendant.

CRIMINAL NO. 1999-0056

APPEARANCES

Jomo Meade, Esq.
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Attorney for Defendant

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H.I.D.T.A. Task Force
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U.S.V.I. 00820
Attorney for Plaintiff

OPINION

Finch, Chief Judge

This matter comes before the Court on Defendant's Motion to Suppress. For reasons expressed below, the Court will grant Defendant's motion.

Facts

On June 23, 1999, agents of the High Intensity Drug Trafficking Area ("HIDTA") task

force obtained a warrant to search units 103 C, 203 B, and 303B of the Colony Cove Condominiums for evidence of drug-related criminal activity. The magistrate issued the warrant on the basis of the sworn affidavit of HIDTA agent, Detective Christopher Howell. In his affidavit, Detective Howell relied upon information provided by a citizen, who asked that his or her identity not be disclosed.

Detective Howell's affidavit provides in relevant part:

Within the past 48 hours, HIDTA agents became aware that several persons, including Saker Shaher, Pervin Proctor and Anthony Marrero are using rented rooms at the Colony Cove Condominiums.¹ . . . The citizen told the agents that during the prior occasions when these individuals used rooms at the complex, there was extensive traffic in and out of the rented rooms. Immediately following the prior rentals, the citizen states that they personally saw what they believed to be marijuana and cocaine residue inside the rooms recently vacated by the individuals. The residue was located on a table in the room and appeared to be remnants of breaking down a larger package and re-packing the suspected drug. . . . Based on my training and experience, I know that it is common practice for persons involved in drug trafficking to utilize hotel rooms to re-package and distribute narcotics. . . .Persons arrested for drug crimes have stated that it is common practice to use rented rooms to manufacture crack cocaine from powder cocaine. It is also common practice for drug dealers to use rental cars to transport narcotics. . . . During surveillance [on June 23, 1999], HIDTA agents observed a rental car parked in front of the rooms being used by individuals described [above].

On June 23, 1999, at approximately 5:17 p.m., joint federal and local law enforcement agents searched units 203B and 303B of the Colony Cove Condominiums.² Upon entry into unit 303B, an officer identified as Aloyo claims that he observed Defendant, Eduardo Marrero, place a

¹ The affidavit does not state how the HIDTA agents learned that these individuals were using the rented rooms, but the Government's Response to Defendant's Motion to Suppress provides that the information came from the undisclosed citizen informant.

² No search was executed on Colony Cove room 103C, because, according to Detective Howell's affidavit, the person who had been renting that room checked out on the morning of June 23, 1999.

9mm Smith & Wesson handgun on top of a TV stand in the living room. Defendant was recognized by the agent as a convicted felon and was subsequently arrested and charged by indictment as a Felon in Possession of a Firearm in violation of 18 U.S.C. 922(g).

Discussion

Defendant now moves to suppress the 9mm Smith & Wesson firearm, allegedly seized from unit 303B of the Colony Cove Condominiums. Additionally, Defendant moves to suppress the introduction of statements allegedly made to agents of the Government prior to and subsequent to his arrest on June 23, 1999, and all other evidence derived from the search and seizure of Defendant's person or property conducted by the Government.

The test to determine whether probable cause exists to support the issuance of a search warrant is whether, given the totality of the circumstances set forth in an affidavit, "including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 238 (1983).³ When the affidavit is based upon an informant's tip, among the factors that are relevant to a court's determination of probable cause under the totality of the circumstances approach are the reliability of an informant, the informant's basis of knowledge, corroboration of information through independent police investigation, an informant's predictions

³ In Gates, the Police Department of Bloomington, Ill., received an anonymous letter which included statements that respondents, Lance and Sue Gates, were engaged in selling drugs; that Sue would drive their car to Florida on May 3 to be loaded with drugs, and Lance would fly down in a few days to drive the car back; that the car's trunk would be loaded with drugs; and that the Gates presently had over \$100,000 worth of drugs in their basement. After receiving the letter, the Bloomington Police Department not only verified a number of the details provided by the anonymous informant, but agents also engaged in surveillance of the Gates' activities.

of future plans, and the level of detail of the information provided. See Gates, 462 U.S. 213.⁴ In determining the overall reliability of a tip, a “deficiency in [the informant’s veracity or basis of knowledge] may be compensated for by a strong showing as to the other, or by some other indicia of reliability.” Id. at 233.

In the instant case, there is an obvious absence of facts in Detective Howell’s application and affidavit for the search warrant. The application and affidavit fail to demonstrate the reliability of the information allegedly given to the agents by the informant, and that there was independent corroboration by the agents through the investigation. Detective Howell’s affidavit merely alleges that the informant observed what the informant believed to be marijuana and cocaine residue in the rented rooms after the individuals vacated the rooms.

The independent police investigation necessary to compensate for the informant’s “veracity” or “reliability” and his or her “basis of knowledge” in the instant case is seriously deficient. The affidavit merely states that during surveillance Detective Howell learned that a person using a false identification card to rent room 103C had checked out,⁵ that Detective Howell observed a rental car parked in front of the rented rooms and that he knows from experience that drug traffickers rent rooms and cars in their illegal activities. There is no

⁴ The Gates’ Court stressed the value of corroboration of details of the informant’s tip by independent police work. First, the Court stated that “[e]ven standing alone, the facts obtained through the independent [police] investigation . . . at least suggested that the Gates were involved in drug trafficking.” Id. at 243. Second, investigators were able to verify numerous details of the anonymous informant’s letter, including that the Gates’ car would be in Florida, that Lance Gates would fly to Florida in the next day or so, and that he would drive the car back toward Bloomingdale, Illinois. Id. at 244.

⁵ The affidavit does not state how Detective Howell learned that the person who rented room 103C had used false identification.

statement that Detective Howell or another agent tested the residue and determined it was cocaine or marijuana. There is no statement indicating that there was a controlled buy from any of the occupants of the apartment, and there is no statement that the agents personally observed the flow of vehicular or human traffic outside the rented rooms which would have been consistent with both the citizen's information and with the practice of selling and distributing drugs. Finally, there is no statement that the agents independently investigated the rental car to determine that it belonged to one of the suspects. Detective Howell merely states that on the day of the search, he observed a rental car outside the rooms.

The Government also argues that the information provided by the citizen was corroborated by independent evidence that, on at least two prior occasions in 1999, the individuals identified by the citizen used rooms at the complex and that the agents learned that these individuals had prior arrest and conviction records. In its argument the Government relies on U.S. v. Conley, 4 F.3d 1200, 1207 (3rd Cir. 1993), in which the court stated that "the use of prior arrests and convictions to aid in establishing probable cause is not only permissible, but often helpful." In Conley, the court held that the affidavit, taken as a whole, contained sufficient facts to support a finding of probable cause for issuance of a search warrant for the office of a company that allegedly operated an illegal gambling establishment.

Conley is factually distinguishable from the instant case. In that case, the agent's application and affidavit for the search warrant contained detailed facts collected over a three month period causing the agents to believe that the Defendant's place of business was the situs of the evidence of the illegal gambling. For example, the affidavit stated that the detectives played video poker machines at numerous locations; they personally received illegal cash pay-offs for

credits they had accumulated on these machines at forty-nine locations; they observed trucks transporting the machines; they were able to ascertain the owner of the machines by examining the machines' permits; forty-two of the forty-nine locations using the machines in conjunction with illegal pay-offs were owned by the Defendant; and the Defendant was found guilty of a similar crime investigated by the affiant. Based on all of the facts recounted above, the Third Circuit Court of Appeals concluded that there was "probable cause to believe that there was a fair probability that evidence of wrongdoing would be found" at the place to be searched. Conley 4 F.3d at 1206.

Applying the principles of Gates and Conley to the instant case, the Court concludes that the affidavit submitted by the agents lacks facts sufficient to compensate for the deficiency in the information given by the informant or demonstrate some other indicia of reliability. The Court therefore finds that in the instant case the affidavit did not contain sufficient facts to support a finding of probable cause for the issuance of a search warrant.

Conclusion

In accordance with the attached Order, Defendant's Motion to Suppress is granted.

ENTER:

DATED: October __, 1999

RAYMOND L. FINCH
U.S. DISTRICT JUDGE

A T T E S T:
Orinn F. Arnold
Clerk of Court

by: _____
Deputy Clerk

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

CRIMINAL NO. 1999-0056

EDUARDO MARRERO,)

Defendant.)

_____)

ORDER

THIS MATTER comes before the Court on Defendant's Motion to Suppress in the above-captioned matter. In accordance with the attached Opinion, it is hereby

ORDERED that Defendant's motion is **GRANTED**.

ENTER:

DATED: October ____, 1999

RAYMOND L. FINCH
U.S. DISTRICT JUDGE

A T T E S T:
Orinn F. Arnold
Clerk of Court

by: _____
Deputy Clerk

